NOV - 2 2015

No. 14-981

In the Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

AMICUS BRIEF OF NATIONAL WOMEN'S LAW CENTER, GAY & LESBIAN ADVOCATES & DEFENDERS, AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. ET AL. SUPPORTING RESPONDENTS

MARCIA D. GREENBERGER
EMILY J. MARTIN
FATIMA GOSS GRAVES
National Women's Law Center
11 Dupont Circle, NW
Washington, DC 20036
(202) 588-5180

MARY L. BONAUTO
Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
(617) 426-1350

SUSAN L. SOMMER
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street
New York, NY 10005
(212) 809-8585

CHARLES A. ROTHFELD
Counsel of Record
ANDREW J. PINCUS
PAUL W. HUGHES
MICHAEL B. KIMBERLY
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

EUGENE R. FIDELL
Yale Law School
Supreme Court Clinic
127 Wall Street
New Haven, CT 06511
(203) 432-4992

Counsel for Amicus Curiae

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Cases

Barnes v. *City of Cincinnati*,
401 F.3d 729 (6th Cir. 2005).....27

Brown v. *Bd. of Educ.*,
347 U.S. 483 (1954).....23

Fisher v. *Univ. of Tex. at Austin*,
631 F.3d 213 (5th Cir. 2011).....34

Fisher v. *Univ. of Tex. at Austin*,
645 F. Supp. 2d 587 (W.D. Tex. 2009).....13

Fisher v. *Univ. of Tex. at Austin*,
133 S. Ct. 2411 (2013).....*passim*

Mississippi Univ. for Women v. *Hogan*,
458 U.S. 718 (1982).....34

Idaho v. *Latta*,
135 S. Ct. 2931 (2015).....27

Keyishian v. *Bd. of Regents*,
385 U.S. 589 (1967).....14

Latta v. *Otter*,
771 F.3d 456 (9th Cir. 2014).....27

Nabozny v. *Podlesny*,
92 F.3d 446 (7th Cir. 1996).....27

Nev. Dep't of Human Res. v. *Hibbs*,
538 U.S. 721 (2003).....24

Obergefell v. *Hodges*,
135 S. Ct. 2584 (2015).....7, 23

Plyler v. *Doe*,
457 U.S. 202 (1982).....13

TABLE OF AUTHORITIES—continued

Page(s)

Regents of Univ. of Cal. v. *Bakke*,
438 U.S. 265 (1978) ..... *passim*

Roberts v. *U.S. Jaycees*,
468 U.S. 609 (1984) 19

Smith v. *City of Salem*,
378 F.3d 566 (6th Cir. 2004) 27

United States v. *Virginia*,
518 U.S. 515 (1996) 5, 23

Other Authorities

Dominic Abrams, *Processes of Prejudice: Theory, Evidence and Intervention*, Equality & Human Rights Commission (2010) 8

Across Racial Lines, More Say Nation Needs to Make Changes to Achieve Racial Equality, Pew Research Ctr. (Aug. 5, 2015) 7

Steve Almond, *Gender Diversity in Leadership Is Key to Business Success*, Guardian (Oct. 2, 2013) 16

Stephen Bear *et al.*, *The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation*, 97 J. Bus. Ethics 207 (2010) 18

Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29 (2011) 15

Sangeeta Bharadwaj Badal, *The Business Benefits of Gender Diversity*, Gallup (Jan. 20, 2014) 17

TABLE OF AUTHORITIES—continued

Page(s)

Brief for Amici Curiae 65 Leading American Businesses in Support of Respondents, *Grutter* v. *Bollinger*, 539 U.S. 306 (2003) (No. 02-241) 15

Brief of 379 Employers and Organizations Representing Employers as Amici Curiae in Support of Petitioners, *Obergefell* v. *Hodges*, 135 S. Ct. 2584 (2015) (No. 14 556) 15

Ira N. Brophy, *The Luxury of Anti-Negro Prejudice*, 9 Pub. Opinion Q. 456 (1946) 8

Crosby Burns *et al.*, *The State of Diversity in Today's Workforce*, Ctr. for Am. Progress (July 2012) 32

Mitchell J. Chang *et al.*, *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 Res. Higher Educ. 529 (2004) 10

Mark Chesler & Melissa Peet, *White Student Views of Affirmative Action on Campus*, 10 Diversity Factor 21 (2002) 12

Kate L. Collier *et al.*, *Intergroup Contact, Attitudes Toward Homosexuality, and the Role of Acceptance of Gender Non-Conformity in Young Adolescents*, 35 J. Adolescence 899 (2012) 9

Corporate Equality Index 2015: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality, Human Rights Campaign Found. (2015) 33

TABLE OF AUTHORITIES—continued

Page(s)

Alice H. Eagly & Antonio Mladinic, *Are People Prejudiced Against Women? Some Answers from Research on Attitudes, Gender Stereotypes, and Judgments of Competence*, 5 Eur. Rev. Soc. Psychol. 1 (1994) 24

Vicky Lea Eldridge *et al.*, *Explaining Comfort with Homosexuality in Rural America*, 51 J. Homosexuality 39 (2006) 9

Dorothee Enskog, *Gender Diversity and Corporate Performance*, Credit Suisse Research Inst. (Sept. 23, 2014) 16

Milia Fisher, *Women of Color and the Gender Wage Gap*, Ctr. for Am. Progress (Apr. 14, 2015) 30

Roxane Harvey Gudeman, *College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity*, in *Does Diversity Make a Difference? Three Research Studies on Diversity in College Classrooms* 37 (Am. Council on Educ. & Am. Ass'n Univ. Professors ed. 2011) 12

Patricia Gurin, Expert Report, *Gratz* v. *Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000) (No. 97-CV-75321) 14

Justin E. Heinze & Stacey S. Horn, *Intergroup Contact and Beliefs About Homosexuality in Adolescence*, 38 J. Youth & Adolescence 937 (2009) 9

TABLE OF AUTHORITIES—continued

Page(s)

Gregory M. Herek & John P. Capitanio, *"Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 Personality & Soc. Psychol. Bull. 412 (1996) 8

Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 Current Directions Psychol. Sci. 19 (2000) 8

Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 Am. Soc. Rev. 208 (2009) 17

Laurel Holland *et al.*, *"That's So Gay!" Exploring College Students' Attitudes Toward the LGBT Population*, 60 J. Homosexuality 575 (2013) 10

Shouping Hu & George D. Kuh, *Diversity Experiences and College Student Learning and Personal Development*, 44 J. C. Student Dev. 320 (2003) 11

Vivian Hunt *et al.*, McKinsey & Co., *Why Diversity Matters* (2015) 16

Sylvia Hurtado *et al.*, *Enhancing Campus Climates for Racial/Ethnic Diversity: Educational Policy and Practice*, 21 Rev. Higher Ed. 270 (1998) 11

Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in *Diversity Challenged:*

TABLE OF AUTHORITIES—continued

Page(s)

Evidence on the Impact of Affirmative Action 187 (Gary Orfield ed., 2001) 11

Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. Soc. Issues 595 (2005) 15

Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 Harv. Educ. Rev. 615 (2008) 18, 19

Sophia Kerby, *The State of Women of Color in the United States: Although They've Made Incredible Strides, Many Barriers Remain for This Growing Population*, Ctr. for Am. Progress (July 17, 2012) 30

Mark E. King *et al.*, *Contact Reduces Transprejudice: A Study on Attitudes Towards Transgenderism and Transgender Civil Rights in Hong Kong*, 21 Int'l J. Sexual Health 17 (2009) 9

Joseph G. Kosciw *et al.*, Gay, Lesbian and Straight Educ. Network, *The 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* (2008) 28

Liana Christin Landivar, *Disparities in STEM Employment by Sex, Race, and Hispanic Origin*, U.S. Census Bureau (Sept. 2013) 21

TABLE OF AUTHORITIES—continued

Page(s)

LGBT Representation Among Lawyers in 2014, Nat'l Ass'n for Law Placement (Mar. 2015) 32

Janice McCabe, *Racial and Gender Microaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates*, 16 Race, Gender, & Class 133 (2009) 26

McKinsey Global Institute, *The Power of Parity: How Advancing Women's Equality Could Add $12 Trillion to Global Growth*, McKinsey & Co. (2015) 15

Missing Pieces: Women and Minorities on Fortune *500 Boards*, All. for Bd. Diversity (2012) 31

Brett Molina, *Apple CEO Tim Cook: 'I'm Proud to Be Gay,'* USA Today (Oct. 30, 2014) 32

Movement Advancement Project *et al.*, *A Broken Bargain for LGBT Workers of Color* (2013) 28, 33

NCES, *Table 322.50: Bachelor's Degrees Conferred to Females by Postsecondary Institutions, by Race/Ethnicity and Field of Study: 2011-12 and 2012-13* 22

NCES, *Table 324.35: Doctor's Degrees Conferred by Degree Granting Institutions, by Sex, Race/Ethnicity, and Fields of Study: 2011-12 and 2012-13* 23

NCES, *Table 324.7: Degrees Conferred by Degree-Granting Institutions in Selected*

TABLE OF AUTHORITIES—continued

Page(s)

Professional Fields, by Sex, Race/Ethnicity, and Field of Study: 2011-12 and 2012-13.....23

Maria Ong *et al.*, *Inside the Double Bind: A Synthesis of Empirical Research on Undergraduate and Graduate Women of Color in Science, Technology, Engineering, and Mathematics*, 81 Harv. Educ. Rev. 172 (2011) 26

Thomas F Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. Personality & Soc. Psychol. 751 (2006).....8

Race Relations, Gallup. 7

Susan Rankin *et al.*, *2010 State of Higher Education for Lesbian, Gay, Bisexual, and Transgender People* (2010) 28

Real Time Insight into the Market for Entry-Level STEM Jobs, Burning Glass Technologies (Feb. 2014) 21

Brad Sears & Christy Mallory, *Documented Evidence Of Employment Discrimination & Its Effects On LGBT People*, Williams Inst. (July 2011).....32

Sara J. Smith *et al.*, *The Effects of Contact on Sexual Prejudice: A Meta-Analysis*, 61 Sex Roles 178 (2009).....9

Tex. Tribune, *Elected Officials Directory* 13, 14

The Cost of the Closet and the Rewards of Inclusion: Why the Workplace Environment for LGBT People Matters to Employers, Human Rights Campaign Found. (2014).....33

TABLE OF AUTHORITIES—continued

Page(s)

Gloria D. Thomas & Carol Hollenshead, *Resisting from the Margins: The Coping Strategies of Black Women and Other Women of Color Faculty Members at a Research University*, 70 J. Negro Educ. 166 (2001) 31

U.S. Dep't of Labor, *Women in the Labor Force: A Databook* (Dec. 2010) 30

University of Texas at Austin, *Proposal to Consider Race and Ethnicity in Admissions* (June 25, 2004) 13

Judith Warner, *The Women's Leadership Gap: Women's Leadership by the Numbers*, Ctr. for Am. Progress (Mar. 7, 2014) 29

Anita Woolley & Thomas W. Malone, *Defend Your Research: What Makes a Team Smarter? More Women*, Harv. Bus. Rev. (June 2011) 17

Anita Woolley *et al.*, *Evidence for a Collective Intelligence Factor in the Performance of Human Groups*, 330 Sci. 686 (2010) 18

INTEREST OF THE *AMICI CURIAE*[1]

Amici are organizations that share a common commitment to civil rights in this country, with a particular focus on eradicating discrimination on the basis of sex, gender, sexual orientation, and gender identity. That interest is closely aligned with the interest in eliminating race discrimination. Social-science research demonstrates, and *amici's* own experience confirms, that successfully breaking down one form of discrimination tends to reduce others as well. Moreover, racial stereotypes often incorporate discriminatory views about women generally and about lesbians, gay men, bisexuals, and transgender ("LGBT") persons, and women and LGBT individuals of color experience the overlapping effects of race-based and gender-based discrimination. *Amici's* perspectives therefore may aid the Court in the resolution of the question presented in this case.

Because numerous *amici* have joined this brief, detailed descriptions appear in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents and their other *amici* demonstrate in detail that the University of Texas admissions program at issue in this case comports with this Court's precedent. This brief focuses on one aspect of the issue presented here: it addresses the importance

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of *amicus* briefs have been filed with the Clerk's office.

of diversity, both (1) to break down stereotypes that continue to disadvantage women and LGBT persons of color; and (2) to facilitate the most effective functioning of educational and other significant institutions.

Programs designed to break down racial barriers, like those at the University of Texas, are essential tools to combat these stereotypes. Uninformed and biased views towards historically disadvantaged groups limit opportunities available to women and LGBT individuals in higher education, a limitation that continues to disadvantage them as they enter the workforce. The interconnected effects of stereotyping on the basis of race, gender, gender identity, and sexual orientation are especially pronounced for persons of color. At least in part, these harmful effects can be addressed by programs designed to produce diverse student bodies at state universities.

A. This Court has repeatedly recognized that a diverse student body produces significant educational benefits, including enhanced classroom dialogue and an associated lessening of stereotypes. Empirical research confirms that common-sense observation: regular interaction with people of different races, genders, gender identities, and sexual orientations leads to a greater understanding of and appreciation for these people. It also produces enhanced cognitive development, more positive academic and social self-perception, higher graduation rates, growth in leadership skills and cultural awareness, higher levels of civic interest, and greater satisfaction with the college experience for students of *all* races. Diversity at a state university therefore enhances the educational experience for all students.

In addition, maintaining a diverse student body—and, of particular importance here, including historically disadvantaged groups like women of color and LGBT persons of color—has significant "downstream" societal benefits. It furthers the State's compelling interest in cultivating a corps of civic, government, and business leaders who understand the interests of, and are capable of communicating and working with, all members of the public. It also helps ensure that all persons, including those historically burdened by crippling and prejudicial stereotypes, will be positioned to fully participate in the civic and economic life of the community. This Court has long recognized that the benefits of diversity in the classroom follow students throughout their lives; Justice Powell, in *Regents of Univ. of Cal.* v. *Bakke*, 438 U.S. 265, 313 (1978), noted that the "Nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation."

Here, too, the data support this observation: public officials, in Texas and across the Nation, are disproportionately drawn from the graduates of public universities. Racial and gender diversity likewise have been shown to produce clear and beneficial effects on performance in the workplace. Overall, the benefits of diversity, for all members of society, are both concrete and profound.

B. Although the compelling value of diversity cannot be gainsaid, it is equally plain that many of our Nation's educational, civic, and business institutions still fail to provide equal opportunities to women and LGBT persons of color. This underrepresentation begins in the classroom, where the effect of persistent stereotyping means that women continue to

be underrepresented in key disciplines, both as undergraduates and in graduate and professional schools. The consequence is that women remain concentrated in fields that correspond to the social roles once formally assigned to them, an effect that is especially striking for women of color.

One unfortunate result of this stereotyping and lack of diversity is that many students are deprived of the critical benefits of learning with and from people representing the widest array of backgrounds and experiences. The future leaders of government and business who the university trains are denied the contact with people of different backgrounds and experiences that is especially valuable in overcoming unthinking prejudice. The other and predictable consequence of this stereotyping is that the skewed selection of undergraduate programs of study effectively excludes many women and persons of color from certain professional fields and occupations. That reality places these people at a disadvantage as they enter the workforce, limiting both their earning power and their prospects for career advancement.

C. In applying the test articulated by this Court in its initial consideration of this case, it is important to begin with the recognition "that the University has established that its goal of diversity is consistent with strict scrutiny." *Fisher* v. *Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2419 (2013). For the reasons explained in detail by the respondents, the University's efforts to obtain the real benefits of diversity for all its students and for the State—by creating a critical mass of persons of color within particular fields of study—satisfy that scrutiny.

ARGUMENT

Two years ago, in its initial consideration of this case, the Court recognized the "compelling interest" in "the educational benefits that flow from a diverse student body," "including enhanced classroom dialogue and the lessening of racial isolation and stereotypes." *Fisher*, 133 S. Ct. at 2417-2418. Thus, as Justice Powell explained in his influential *Bakke* opinion, diversity, "whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring * * * experiences, outlooks, and ideas that enrich the training of [a university's] student body and better equip its graduates to render with understanding their vital service to humanity." 438 U.S. at 314.

Of particular importance here, university programs designed to include within the student body a broad range of individuals act in positive ways to displace stereotypes. This Court has long recognized that women and members of minority groups are too often disadvantaged by "[o]verbroad generalizations about the[ir] different talents, capacities, or preferences" (*United States* v. *Virginia*, 518 U.S. 515, 533 (1996))—a concern that applies with special force to women and LGBT individuals of color, for whom the combination of race-based and sex-based stereotypes has significantly enhanced negative effects, both on the self-perception of these individuals and how others perceive them. By working to eradicate these negative effects, diversity in education helps these individuals succeed later in life as they pursue governmental, civic, and business opportunities.

Creation of a diverse environment in higher education yields broader and universally valuable benefits as well. Empirical research demonstrates that education in a diverse setting improves teaching and

learning for *all* students. Engaging with a wide array of fellow students exposes individuals to a broader set of ideas, experiences, perspectives, and values; gives students a greater understanding of each other, of the subject matter, and of the world around them; and equips students to succeed in government, civic institutions, and business. And these effects carry with them demonstrated benefits for society and the economy.

But universities face a significant practical problem in providing their students with the diverse educational environment that leads to these salutary results. The persistent effect of stereotypes—which tend to channel women, especially women of color, into particular academic programs—results in a striking lack of diversity in many students' actual, day-to-day academic experiences. Unless a university is able to counteract the effects of these stereotypes by assuring a critical mass of diverse students across fields of study, it will be unable to provide the "diversity in fact" necessary to fulfill its educational mission.

A. The benefits of diversity.

1. Overcoming stereotypes.

We begin with a fundamental point: diversity—by which we mean, in this context, higher education in an environment that includes a meaningful number of students of different races, genders, gender identities, and sexual orientations—acts powerfully to break down stereotypes and to counteract prejudice founded on lack of familiarity with persons of different backgrounds and characteristics. The notion that exposure to others' attitudes and experiences begets greater understanding is a matter of com-

mon sense and experience. Indeed, just last Term, this Court noted that "[t]he reasons why marriage is a fundamental right became more clear and compelling from a full awareness and understanding of the hurt that resulted from laws barring interracial unions" (*Obergefell* v. *Hodges*, 135 S. Ct. 2584, 2603 (2015)), a realization necessarily grounded in exposure to the individuals most directly affected by marriage discrimination.

The Nation's work in achieving "full awareness and understanding" of the persisting pernicious effects of racial injustice is far from complete, as most in this country recognize. For example, a recent poll shows that by a margin of nearly two to one, people agree that the country must continue to make changes if black individuals are to have rights equal to those of white individuals. Yet while a majority are in agreement on this, significant disparities still persist between the understandings of white people surveyed, 53% of whom believe changes remain necessary, compared to 86% of black people and 70% of Hispanics who recognize this necessity. *Across Racial Lines, More Say Nation Needs to Make Changes to Achieve Racial Equality*, Pew Research Ctr. (Aug. 5, 2015), http://perma.cc/3TCT-WYDB. And while, according to a July 2015 survey, 60% overall agree that bias against black people is widespread in this country, 55% of whites are of this view compared to 80% of blacks. *Race Relations*, Gallup http://perma.cc/6Q9G-3UFS.

The Court's insight that greater understanding of those who experience discrimination can speed discrimination's end is borne out by empirical data. When members of different groups come into contact with one another, their experience often increases

trust for, empathy toward, and knowledge of the other group. See Dominic Abrams, *Processes of Prejudice: Theory, Evidence and Intervention*, Equality & Human Rights Commission, 35 fig.2.5 (2010), http://perma.cc/9N7N-UCZ5 (summarizing current research evidence). As a result, persons in this situation often generalize their positive experiences with individual members of the other group to the entire group; a reduction in stereotyping and lower levels of anxiety follow. *Id.* at 35-36.

An extensive body of research now demonstrates that intergroup contact is an effective tool for reducing intergroup prejudice. See, *e.g.*, Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. Personality & Soc. Psychol. 751 (2006) (presenting a meta-analysis of 713 independent samples from 515 studies). Although originally developed to study racial and ethnic contacts (see, *e.g.*, Ira N. Brophy, *The Luxury of Anti-Negro Prejudice*, 9 Pub. Opinion Q. 456, 462, 465-466 (1946) (finding "a highly significant [correlation] * * * between the absence of [racial] prejudice" and the number of voyages that white seamen had taken with black peers)), this "contact theory" has been used to study other inter-group contacts as well—including with LGBT persons. See, *e.g.*, Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 Current Directions Psychol. Sci. 19, 20-21 (2000); Gregory M. Herek & John P. Capitanio, *"Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 Personality & Soc. Psychol. Bull. 412, 420 (1996) (finding that "[h]eterosexuals who had experienced interpersonal contact with gay men or lesbians expressed significantly more favorable general attitudes toward gay people than heterosexuals

without contact" and that "favorable attitudes were more likely among heterosexuals who reported multiple contacts").

The reduction in prejudice resulting from contact with LGBT persons is now well-documented. A meta-analysis from forty-one articles found "a significant negative relationship between contact and sexual prejudice." Sara J. Smith *et al.*, *The Effects of Contact on Sexual Prejudice: A Meta-Analysis*, 61 Sex Roles 178, 178 (2009). For instance, adolescents who have had contact with gay or lesbian persons outside school have more positive associations toward gay men and lesbians. See Kate L. Collier *et al.*, *Intergroup Contact, Attitudes Toward Homosexuality, and the Role of Acceptance of Gender Non-Conformity in Young Adolescents*, 35 J. Adolescence 899 (2012). The same is true of adolescents with gay or lesbian friends. See Justin E. Heinze & Stacey S. Horn, *Intergroup Contact and Beliefs About Homosexuality in Adolescence*, 38 J. Youth & Adolescence 937 (2009). In rural communities, interpersonal contact with gay and lesbian persons is associated with more tolerant attitudes. See Vicky Lea Eldridge *et al.*, *Explaining Comfort with Homosexuality in Rural America*, 51 J. Homosexuality 39, 50 (2006). And those who have had previous contact with transgender individuals demonstrate lower levels of prejudice towards transgender people. See Mark E. King *et al.*, *Contact Reduces Transprejudice: A Study on Attitudes Towards Transgenderism and Transgender Civil Rights in Hong Kong*, 21 Int'l J. Sexual Health 17, 29-32 (2009).

Finally, and of particular relevance here, the number of years that college students are exposed to LGBT persons is correlated with their openness and

acceptance towards such persons. See Laurel Holland *et al.*, *"That's So Gay!" Exploring College Students' Attitudes Toward the LGBT Population*, 60 J. Homosexuality 575, 576-577 (2013).

2. Educational benefits.

In addition, education in a diverse environment brings with it an associated set of broader benefits of value to all students. Perhaps most obviously, classes are "simply more enlightening and interesting when the students have the greatest possible variety of backgrounds." *Grutter* v. *Bollinger*, 539 U.S. 306, 330 (2003) (quotation omitted). Therefore, maximizing the variety of students' perspectives best serves a university's goals of creating both a "robust exchange of ideas" (see *Bakke*, 438 U.S. at 313 (opinion of Powell, J.)) and a vibrant academic community.

For students of *all* races, regular interaction with persons of different races, genders, gender identities, and sexual orientations can be expected to lead to greater cognitive development, more positive academic and social self-perception, higher graduation rates, growth in leadership skills and cultural awareness, higher levels of civic interest, and greater satisfaction with the college experience. See Mitchell J. Chang *et al.*, *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 Res. Higher Educ. 529, 530 (2004) (summarizing numerous empirical studies showing benefits of cross-racial interaction). Students in diverse educational environments also become more adept at recognizing the complexity of issues, defending and challenging their own perspectives, and understanding opposing viewpoints; they display "greater openness to diverse perspectives and a willingness to challenge their own beliefs." See Sylvia Hurtado,

Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development, in *Diversity Challenged: Evidence on the Impact of Affirmative Action* 187, 189 (Gary Orfield ed., 2001) (collecting and synthesizing empirical research).[2]

Empirical studies also have concluded that students, both white and non-white, and both male and female, believe that their educational experiences were enhanced by the diverse student body in their institutions. See, *e.g.*, Shouping Hu & George D. Kuh, *Diversity Experiences and College Student Learning and Personal Development*, 44 J. C. Student Dev. 320 (2003); Sylvia Hurtado *et al.*, *Enhancing Campus Climates for Racial/Ethnic Diversity: Educational Policy and Practice*, 21 Rev. Higher Ed. 270 (1998). One characteristic response was offered by a white student interviewed for a qualitative study of diversity at the University of Michigan:

> [Affirmative action] affects me because without it we wouldn't be able to have diverse classes. I wouldn't be able to sit in a class on race and have students who are not white talk about their experience so I can learn from them. * * * Most of your education in college comes from living with people and interacting with people and hearing people's

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[2] See also Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. Soc. Issues 595, 603 (2005) ("[S]tudents who reported frequent contact with diverse peers displayed greater attributional complexity, self-confidence in cultural awareness, [and] development of a pluralistic orientation."); Daryl G. Smith, *Diversity Works: The Emerging Picture of How Students Benefit* 29 (1997).

> experiences and learning to deal with people you don't get along with, who you can't understand and can't see eye to eye with, and how to function in those situations. I think that that's, as a white student, where affirmative action benefits us the most. * * * We'd never really understand other people's points of view without hearing them firsthand.

Mark Chesler & Melissa Peet, *White Student Views of Affirmative Action on Campus*, 10 Diversity Factor 21 (2002).

These social and intellectual benefits also are borne out in surveys of faculty respondents. According to the author of one such study, "[f]aculty members who teach content related to diversity found that students in racially and ethnically diverse classes developed a heightened capacity to think critically." Roxane Harvey Gudeman, *College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity*, in *Does Diversity Make a Difference? Three Research Studies on Diversity in College Classrooms* 37, 45 (Am. Council on Educ. & Am. Ass'n Univ. Professors ed., 2011). The centrality of that goal to the university's mission is well-settled: "the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation." *Fisher*, 133 S. Ct. at 2418 (quotation omitted).

3. Civic benefits.

The value of diversity in the university environment is not limited to its immediate educational benefits: participation at the college and university level is the essential first step toward the fuller involvement of previously disadvantaged groups in civic and

business life. Higher education—especially at a State's flagship public university—prepares students to be leaders and participants in their communities, their States, and the Nation; it helps "cultivate a set of leaders with legitimacy in the eyes of the citizenry," ensuring that "the path to leadership [is] visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 331-332; *cf. Plyler* v. *Doe*, 457 U.S. 202, 221-223 (1982) (describing the "enduring disabilities" that ensue when young people are deprived of an education).

Recognizing this, the University of Texas at Austin's mission as the State's flagship university is to "produc[e] future educational, cultural, business, and sociopolitical leaders." University of Texas at Austin, *Proposal to Consider Race and Ethnicity in Admissions* 24 (June 25, 2004) (quoted in *Fisher* v. *Univ. of Tex. at Austin*, 645 F. Supp. 2d 587, 602 (W.D. Tex. 2009)). And state universities do in fact serve a unique role in preparing the future leaders of their States. For example, eighteen of thirty-one state senators in the Texas legislature—almost two-thirds—attended a Texas state university. *Elected Officials Directory*, Tex. Tribune, http://perma.cc/UFL7-HBXH.

What is true for community leaders in general is often even more so for minorities, who historically lacked familial connections and other traditional avenues to leadership positions. Thus, for example, seven of the nine Texas state senators who are black or Hispanic obtained their undergraduate or graduate degrees from public institutions in Texas; six attended schools in the University of Texas system. *Ibid.*

And for those seeking the highest offices, attendance at a State's public universities is often especially important: 55% of Texas's thirty-eight federal legislators attended a public university in Texas. *Ibid.* This number is even higher for people of color: 64% of black and Hispanic members attended Texas's public universities, including four graduates of the University of Texas. *Ibid.*

In addition, for all of our civic leaders, whatever their gender or ethnicity, having been educated in a diverse environment is critical: "[I]t is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Bakke*, 438 U.S. at 312-313 (opinion of Powell, J.) (quoting *Keyishian* v. *Bd. of Regents*, 385 U.S. 589, 603 (1967)). If our political and community leaders are to lead effectively, they must first "(1) learn to understand and consider the multiple perspectives that are inherent in a diverse environment; (2) deal with the conflicts that different perspectives sometimes entail; and (3) appreciate the common values and integrative forces that incorporate these differences in the pursuit of the broader common good." Expert Report of Patricia Gurin, *Gratz* v. *Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000) (No. 97-CV-75321), *Grutter* v. *Bollinger*, 137 F. Supp. 2d 821 (E.D. Mich. 2001) (No. 97-CV-75928), *reprinted in Reports Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 Mich. J. Race & L. 363, 383 (1999).

Simply put, experiencing diversity in college "prepar[es] students for work and citizenship" (*Grutter*, 539 U.S. at 331), increasing and improving

political participation and civic engagement. See generally Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29 (2011); Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. Soc. Issues 595 (2005). Students educated in diverse environments are thus better prepared to be both citizens and leaders. And that is good for everyone—those who come from historically underrepresented communities, and those who do not.

4. Workplace benefits.

Experience in the workplace and the business world provides additional, and very powerful, evidence that significant benefits flow from exposure to "diverse people, ideas, perspective, and interactions." Brief for Amici Curiae 65 Leading American Businesses in Support of Respondents at 2, *Grutter*, 539 U.S. 306 (No. 02-241), *Gratz* v. *Bollinger*, 539 U.S. 244 (2003) (No. 02-516). Recognizing the value of a diverse corporate community that includes LGBT individuals, many of the largest employers in the United States recently stated to this Court that "diversity and inclusion strengthen, not weaken, our businesses." Brief of 379 Employers and Organizations Representing Employers as Amici Curiae in Support of Petitioners at 19, *Obergefell* v. *Hodges*, 135 S. Ct. 2584 (2015) (No. 14-556).

This observation is borne out by the overwhelming data: racial and gender diversity has clear and beneficial effects on a company's performance. Conversely, lack of diversity in the business world continues to stifle global economic progress. Thus, a McKinsey report found that if every country matched the progress toward gender parity of its fastest-

improving neighbor, global GDP could increase by up to $12 trillion by 2025. McKinsey Global Institute, *The Power of Parity: How Advancing Women's Equality Could Add $12 Trillion to Global Growth*, McKinsey & Co. (2015). The same study found that if women around the world were able to reach their full potential in the workplace, annual GDP would increase by $28 trillion by 2025. *Ibid.*

Diversity benefits all levels of the labor force, from lower-wage to extremely specialized industries. Perhaps the strongest indicator of how companies thrive as a result of diversity is the way in which racial and gender integration contributes to financial success. A very recent analysis of 366 public companies across a range of industries in Canada, Latin America, the United Kingdom, and the United States found that companies in the top quartile for racial and ethnic diversity are 35% more likely to have financial returns above their respective national industry medians. Vivian Hunt *et al.*, McKinsey & Co., *Why Diversity Matters* 3 (2015), http://perma.cc/QNT2-B5BL. Companies in the top quartile for gender diversity are 15% more likely to have financial returns above their respective national industry medians. *Ibid.* Conversely, companies in the bottom quartile both for gender and racial diversity are statistically less likely to achieve above-average financial returns than average peer companies. *Ibid.* A similar study conducted by the British government in 2007 found that companies with more women on their boards outperform their rivals with a 42% higher return on sales, 66% higher return on invested capital, and 53% higher return on equity. Steve Almond, *Gender Diversity in Leadership Is Key to Business Success*, Guardian (Oct. 2, 2013), http://perma.cc/P4HE-YXX9. Similarly, recent Credit

Suisse research suggests a link between female directors and business performance: companies with at least one female director show better financial outcomes on a range of measures than do those with no women board members. Dorothee Enskog, *Gender Diversity and Corporate Performance*, Credit Suisse Research Inst. (Sept. 23, 2014) https://perma.cc/8YL6-AKJN.

Other research has produced similar results. A recent Gallup study found that "[g]ender-diverse business units in * * * retail compan[ies] have 14% higher comparable revenue than less-diverse business units." Sangeeta Bharadwaj Badal, *The Business Benefits of Gender Diversity*, Gallup (Jan. 20, 2014), http://perma.cc/LX3L-92N6. The study found a similar increase in net profit among diverse companies in the hospitality industry. *Ibid.* An American Sociological Association study supports this research, finding that for every 1% rise in the rate of gender and ethnic diversity in a workforce, there is a 3% and 9% rise in sales revenue, respectively. Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 Am. Soc. Rev. 208, 217 (2009).

Diversity also benefits economic performance in more intangible ways. For example, one widely cited study published in the Harvard Business Review noted how a group's "collective intelligence" rises when it includes more women. Anita Woolley & Thomas W. Malone, *Defend Your Research: What Makes a Team Smarter? More Women*, Harv. Bus. Rev. (June 2011), https://perma.cc/AQ9Y-97ET. The study evaluated 192 teams comprised of people from ages eighteen to sixty on a variety of metrics. Teams with greater gender diversity fared better in deci-

sion-making and problem-solving ability. *Ibid.* Researchers believe the success of gender-balanced teams may be due to a trait they call "social sensitivity," which reflects how well a person can read the emotions of other people; it appears that the ability to perceive and sense emotional changes leads to more collaborative patterns of group behavior. *Ibid.* Because diverse groups often encourage members to be more sensitive to different viewpoints and perspectives, they better possessed the traits that researchers found correlative with success. *Ibid.* Similarly, an MIT study found that adding women to small groups improved effectiveness more than did enhanced group cohesion, group satisfaction, or group motivation. See Anita Woolley *et al.*, *Evidence for a Collective Intelligence Factor in the Performance of Human Groups*, 330 Sci. 686, 688 (2010).

Studies have also found that diversity can improve a company's sense of corporate social responsibility. See Stephen Bear *et al.*, *The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation*, 97 J. Bus. Ethics 207 (2010). This development, in turn, enhances performance: businesses in every industry recognize that workers and managers are most effective when they can interact effectively with individuals of varied backgrounds. "The ability to adapt to different perspectives and cultures has gone from being a luxury among cosmopolitan sophisticates to an absolute necessity for success in an increasingly diverse and global workplace." Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross- Cultural Workforce Competencies*, 78 Harv. Educ. Rev. 615, 636 (2008).

Against this background, the benefits of diversity, for all members of society, are both concrete and profound. And the essential first step in achieving a diverse political and business life is the creation of a meaningfully diverse educational environment. Diversity in higher education fosters significant professional opportunities for minorities, including women and LGBT people of color, while at the same time helping all students negotiate more effectively the complexities of the modern workplace and the modern marketplace—skills essential to the prosperity of all people in this country, regardless of race. *Id.* at 632.

B. Underrepresentation and stereotyping of women and other historically disadvantaged groups remain significant problems in higher education and other societal institutions.

The compelling need for the creation of diverse educational environments is plain. But it is equally plain that many people—including women, LGBT individuals, and, especially, women and LGBT individuals of color—remain the targets of deeply rooted stereotypes about their talents, capacities, and preferences that limit their educational and career opportunities. People in these categories are limited in both their aspirations and their external opportunities by prejudicial attitudes and labels.

That was true a generation ago, when the Court observed that "archaic and overbroad assumptions about the relative needs and capacities of the sexes force[] individuals to labor under stereotypical notions that often bear no relationship to their actual abilities," thus "depriv[ing] persons of their individual dignity and den[ying] society the benefits of wide

participation in political, economic, and cultural life." *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 625 (1984). And as explained below, it still remains true today. In such a setting, admissions programs like the one at issue in this case, designed to bring diverse students into an environment with the full range of educational opportunities essential to success in our society, serve a truly compelling purpose.

1. Lack of diversity in higher education.

a. *Women overall.*

Although women have made great strides in attaining higher education, and now comprise more than half of college graduates annually, they continue to be underrepresented in key disciplines, most notably science, technology, engineering, and math (STEM),[3] as well as certain graduate degree programs. This problem, which begins at the primary- and secondary-school levels,[4] is exacerbated at undergraduate universities and carries over into the professional sphere. As a result, women are disproportionately underrepresented in technical career

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[3] See National Center for Education Statistics (NCES), *Table 301: Bachelor's Degrees Conferred by Degree-Granting Institutions, by Sex, Race/Ethnicity, and Field of Study: 2009-10*, U.S. Dep't of Educ. (Nov. 2011), https://perma.cc/P263-5HL7.

[4] See Brittany C. Cunningham *et al.*, *Gender Differences in Science, Technology, Engineering, and Mathematics (STEM) Interest, Credits Earned, and NAEP Performance in the 12th Grade*, Dep't of Educ. (Feb. 2015), http://perma.cc/4CGG-A3WS (showing that, at the high school level, men are over five times more likely to study engineering/science technologies and nearly twice as likely to study computer/information science as are women).

fields—which are often among the most lucrative and economically influential.

Thus, women who attend college are disproportionately concentrated in fields that correspond to the social roles once formally assigned to them. For example, in 2009-2010, women received 77% of the bachelor's degrees in psychology, 79.5% in education, 82% in public administration and social services fields, and 85% in health professions and related programs. See NCES, *Table 301*, *supra*. By contrast, women received only 18.3% of the bachelor's degrees in engineering, 18.1% in computer and information sciences, and 10.1% in other engineering-related fields. *Ibid.*

This gender disparity at the college level inevitably leads to the gross underrepresentation of women in STEM jobs. According to 2011 data compiled by the U.S. Census Bureau, although women comprise 61% of the Nation's social scientists, they account for just 41% of life and physical scientists, 27% of computer workers, and 13% of engineers. Liana Christin Landivar, *Disparities in STEM Employment by Sex, Race, and Hispanic Origin*, U.S. Census Bureau (Sept. 2013), http://perma.cc/ZS2B-5A3V.

This disparity has significant economic consequences: STEM jobs pay more on average than non-STEM jobs, and STEM graduates are in greater demand than their non-STEM graduate peers. A 2013 study showed that there are 2.5 entry-level job postings for each new college graduate in STEM fields compared to 1.1 postings for each new graduate in non-STEM fields. STEM jobs also offer a substantial salary premium. The average advertised salary for entry-level STEM jobs requiring a bachelor's degree or higher is $66,123 compared to $52,299 for non-

STEM jobs. *Real Time Insight into the Market for Entry-Level STEM Jobs*, Burning Glass Technologies 1 (Feb. 2014), http://perma.cc/G55P-F4DP.

b. *Women of color.*

This underrepresentation is even more pronounced for minority women. Overall, black women earned 6.7% of bachelor's degrees in 2013, and Hispanic women 6.1%. But black women accounted for just 3.2% of computer science majors and 1% of engineering majors; Hispanic women made up only 1.7% of computer-science majors and 1.7% of engineering majors. NCES, *Table 322.50: Bachelor's Degrees Conferred to Females by Postsecondary Institutions, by Race/Ethnicity and Field of Study: 2011-12 and 2012-13*, http://perma.cc/2FD6-K9UH.

The negative effects of these skewed selections are two-fold. One consequence for the real, day-to-day experience of many students is that they attend classes, form study groups, and participate in special projects with a largely homogeneous cohort—even if there is statistical diversity on campus when the student body is considered as a whole. This means that in a field—such as engineering or computer science—traditionally populated by white men, a student may receive few, if any, of the educational benefits of diversity. And the university's goal to afford those benefits to all students may go unrealized.

The other and predictable consequence is that the skewed selection of undergraduate programs of study effectively excludes many women and minorities from certain professional fields and occupations; these individuals are placed at a disadvantage compared to their counterparts as they enter the workforce, limiting both their earning power and their

prospects for career advancement. Because, for example, engineering and computer science courses and majors are overwhelmingly populated by white men, the pools of qualified candidates for graduate degrees in those fields are similarly narrow: in 2013, black women earned just 797 of 22,777 master's degrees awarded in computer science, and Hispanic women just 197. These groups received only 320 and 458 of the 40,417 master's degrees in engineering, respectively. NCES, *Table 323.50: Master's Degrees Conferred by Degree Granting Institutions, by Sex, Race/Ethnicity, and Fields of Study: 2011-12 and 2012-13*, http://perma.cc/8BKX-QKBZ. The effect is even more extreme for doctoral degrees: nationwide, in 2013, just 65 black women and 69 Hispanic women earned doctoral degrees in engineering, and just 24 black women and 9 Hispanic women earned doctoral degrees in computer science. Overall, 9,356 doctoral degrees were conferred in engineering, and 1,826 in computer science. NCES, *Table 324.35: Doctor's Degrees Conferred by Degree Granting Institutions, by Sex, Race/Ethnicity, and Fields of Study: 2011-12 and 2012-13*, http://perma.cc/FA4T-4AA3.

The story in professional schools is similar: in 2013, black women received only 4.1% of the medical degrees awarded; Hispanic women, 3.2%. Black women received 4.4% of the law degrees awarded; Hispanic women, 4.2%. Black women received 2.5% of the dentistry degrees awarded; Hispanic women 3.5%. NCES, *Table 324.7: Degrees Conferred by Degree-Granting Institutions in Selected Professional Fields, by Sex, Race/Ethnicity, and Field of Study: 2011-12 and 2012-13*, http://perma.cc/56PD-XYWX.

2. Stereotyping.

This lack of diversity in many fields of study both results from, and exacerbates, the stereotyping that often marks attitudes towards women and historically disadvantaged groups. Although this Court has made significant strides toward abolishing the laws that divided Americans on the basis of race, sex, and sexual orientation (see, *e.g.*, *Obergefell*, 135 S. Ct. at 2604; *Virginia*, 518 U.S. at 515; *Mississippi University for Women* v. *Hogan*, 458 U.S. 718, 730 (1982); *Brown* v. *Bd. of Educ.*, 347 U.S. 483, 495 (1954)), stereotypes continue to influence our society—not least in the expectations communicated to individuals, and therefore in their own perceptions of their abilities and capacities and the educational and career choices they make. See, *e.g.*, *Nev. Dep't of Human Res.* v. *Hibbs*, 538 U.S. 721, 730 (2003) ("[S]tereotype-based beliefs about the allocation of family duties remain[] firmly rooted."). These effects are plainly visible on college and university campuses, where they have significant, and often life-long, effects on the disfavored individuals. If such stereotypes are to be overcome, it is essential that universities be able to use the tools necessary to create a meaningfully diverse student body.

a. *Stereotyping of women.*

i. Empirical studies reveal that although women are generally perceived favorably on college campuses today, these favorable attitudes often remain rooted not in individual abilities but in assumptions about women's nurturing and communal qualities—assumptions that continue to support expectations that women are best suited only for "domestic role[s] as well as for low-status, low-paying female dominated jobs." Alice H. Eagly & Antonio Mladinic, *Are*

People Prejudiced Against Women? Some Answers from Research on Attitudes, Gender Stereotypes, and Judgments of Competence, 5 Eur. Rev. Soc. Psychol. 1, 1-2 (1994).[5]

Women are still perceived as inferior to men in terms of leadership qualities, such as assertiveness, competitiveness, independence, and courage, traditionally regarded as necessary to manage effectively. As a result, women continue to be viewed as less fit for paid employment generally, and for management and high-status positions in particular.[6]

ii. Women of color face unique and heightened threats from harmful stereotypes. For example, a

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[5] See also, *e.g.*, Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 Soc. Just. Res. 143, 149 (2004) (finding that both men and women "implicitly favor male leaders over female leaders" and "spontaneously associate women with communal traits like 'sensitive'").

[6] Eagly & Mladinic, *Are People Prejudiced Against Women?*, *supra*, at 25-26. See also, *e.g.*, Dasgupta, 17 Soc. Just. Res. at 156 (describing study finding that people who held strong implicit gender stereotypes associating women with "communal" traits (*e.g.*, helpful) and men with "agentic" traits (*e.g.*, ambitious) were more likely to evaluate female candidates for leadership jobs as having poor social skills while evaluating similar male candidates positively). These differences in perception extend to other areas as well. See, *e.g.*, Catherine Hill *et al.*, *Why So Few?: Women in Science, Technology, Engineering, and Mathematics*, Am. Ass'n Univ. Women 74, 76 (2010), http://perma.cc/JJM8-UAZ9 (noting that "even individuals who consciously refute gender and science stereotypes can still hold th[e] belief at an unconscious level" that women are not as proficient in math and science as men, and that "more than 70 percent of [respondents] more readily associate 'male' with science and 'female' with arts").

survey of recent literature on women in STEM fields showed that many academic studies describe undergraduate STEM programs as "chilly" toward women of color, while several "specifically demonstrated the gender *and* racial/ethnic bias that women of color experience on a day-to-day basis as STEM majors[.]" Maria Ong *et al.*, *Inside the Double Bind: A Synthesis of Empirical Research on Undergraduate and Graduate Women of Color in Science, Technology, Engineering, and Mathematics*, 81 Harv. Educ. Rev. 172, 182 (2011).

When there is only one woman of color in a classroom setting or laboratory she is likely to experience tokenism. *Id.* at 183. One 2009 study that examined data from a large public university with few minority students observed that black women report not being taken seriously and being expected to represent their race in classroom settings, while Latina women reported pervasive exposure to stereotypes of foreignness and sexual exoticness. Janice McCabe, *Racial and Gender Microaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates*, 16 Race, Gender, & Class 133, 140-143 (2009). The problem of tokenism is even starker in graduate STEM programs, which may be more isolating. See Ong, 81 Harv. Educ. Rev. at 192-193.

In addition, implicit and often unconscious bias particularly disadvantages women of color. Studies show that individuals who intend to be evenhanded and believe themselves to be unbiased nonetheless will often unconsciously assign unfavorable traits to members of these groups, and will find superficially

neutral reasons to treat members of these groups as objectively less qualified than their competitors.[7]

b. *Stereotyping of LGBT individuals.*

i. Very similar stereotypes and biases affect persons who identify as LGBT. Discrimination based on sexual orientation and gender identity has appropriately been understood to be intertwined with gender discrimination, linked to and premised on sex-based preferences, assumptions, expectations, stereotypes, and norms. See, *e.g.*, *Latta* v. *Otter*, 771 F.3d 456, 479 (9th Cir. 2014) (Berzon, J., concurring) (cert. denied, 135 S. Ct. 2931 (2015); *Glenn* v. *Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes* v. *City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith* v. *City of Salem*, 378 F.3d 566 (6th Cir. 2004), *Nabozny* v. *Podlesny*, 92 F.3d 446 (7th Cir. 1996).

Discrimination on the basis of sexual orientation persists to a discouraging degree in the classroom. In a survey of college campuses, 23% of LGBT respondents reported experiencing harassment, as opposed to 12% of non-LGBT counterparts; LGBT respond-

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[7] Eva Patterson *et al.*, *The Id, the Ego, and Equal Protection in the 21st Century: Building upon Charles Lawrence's Vision To Mount a Contemporary Challenge to the Intent Doctrine*, 40 Conn. L. Rev. 1175, 1186-1187 (2008). See also Dasgupta, 17 Soc. Just. Res. at 156 ("[I]mplicit stereotypic beliefs * * * influence important judgments such as people's impressions of others [and] decisions about who should be hired for a job." (emphasis and citation omitted)); Denise Sekaquaptewa *et al.*, *Stereotypic Explanatory Bias: Implicit Stereotyping As a Predictor of Discrimination*, 39 J. Experimental Soc. Psychol. 75 (2003) (finding that white men who exhibited implicit racial bias were more likely to ask racially stereotyping interview questions to black women than to white job candidates during simulated job interviews).

ents were seven times more likely to indicate the harassment was based on their sexual orientation or gender identity (83% and 12% respectively). LGBT respondents were twice as likely to be targets of derogatory remarks (61%) or stared at (37%) as were their non-LGBT counterparts (29% and 17%, respectively). Respondents who identified as gay were most often targets of derogatory remarks (66%), while lesbians were most likely ignored or excluded (53%). Susan Rankin *et al.*, *2010 State of Higher Education for Lesbian, Gay, Bisexual, and Transgender People* 10 (2010), http://perma.cc/RHQ5-3Z32.

ii. LGBT students of color are even more likely to be subjected to negative treatment by their peers. A 2007 study found that nearly half of LGBT secondary school students of color experienced verbal harassment because of *both* their sexual orientation and their race or ethnicity, and 15% had been physically harassed or assaulted based on both of these aspects of their identity. Joseph G. Kosciw *et al.*, Gay, Lesbian and Straight Educ. Network, *The 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* 78 (2008). See also Movement Advancement Project *et al.*, *A Broken Bargain for LGBT Workers of Color* i-iii (2013), http://perma.cc/2N7B-5WRC(describing the unique barriers to employment experience by LGBT people of color).

3. Downstream consequences.

Ongoing underrepresentation and stereotyping of women, LGBT individuals, and women and LGBT individuals of color in critical university programs does more than harm students; the practical exclusion of these people from particular educational programs limits their opportunities in the workforce. In

turn, this exacerbates downstream challenges in the corporate sphere, marginalizing these critical demographics in the country's most important leadership arenas. The result is harm to the affected individuals, impaired organizational effectiveness, and damage to the Nation's economy.

There is perhaps no area in which the consequences of stereotyping and underrepresentation in key educational programs has a more obvious and harmful effect than in economic life. As a general matter, women are grossly underrepresented at the higher levels of business, an absence that is even more striking for women and LGBT persons of color. And LGBT persons—again, especially those of color—suffer disproportionately high levels of poverty.

a. *Women.*

The lack of women in the corporate world is most notable at the highest levels. Women make up only 14.6% of executive officers, only 8.1% of top earners, and only 4.6% of Fortune 500 CEOs. Judith Warner, *The Women's Leadership Gap: Women's Leadership by the Numbers*, Ctr. for Am. Progress 1 (Mar. 7, 2014), https://perma.cc/66LD-AJS2. They hold fewer than 20% of Fortune 500 board seats. *Ibid.* In the financial service industry, they make up just 12.4% of executive officers and 18.3% of board directors. *Ibid.* None are CEOs. *Ibid.* In the legal field, women make up only 15% of equity partners at law firms. *Id.* at 2. Only 15.9% of medical school deans are women. *Ibid.*

The lack of diversity in the business world is particularly striking for minority women. Women of color remain concentrated for the most part in lower-status occupations and sectors of the economy. In 2014, 62% of working Hispanic women and 57% of

working black women were clustered into just two job groups—service occupations, and sales and office occupations. The corresponding figure for white women was 51% and for Asian women 44%. Milia Fisher, *Women of Color and the Gender Wage Gap*, Ctr. for Am. Progress 2 (Apr. 14, 2015), https://perma.cc/6HQS-PY6W. More than half of all black women in the workforce fall into one of three fields: health services, such as nursing or home care; education; and wholesale and retail trade. U.S. Dep't of Labor, *Women in the Labor Force: A Databook* 48 tbl.15 (Dec. 2010), http://perma.cc/HJZ2-GRYR. "In 2014, only 35% of black women and 26% of Hispanic women were employed in higher-paying management, professional, and related jobs—compared with 48 percent of Asian women and 43 percent of white women." Fisher, *supra*, at 2. "Women of color are also more likely to be employed as involuntary part-time workers than their white counterparts." *Id.* at 3.

Unsurprisingly, this stratification has a material effect on the economic status of women of color: they experience lower median weekly earnings, higher rates of poverty, and greater unemployment than white women (who themselves have lower earnings than white men). A 2012 survey found that, "[i]n comparison to white women, whose median usual weekly earnings are $703, black women only earn $595 and Latina women just $518." Sophia Kerby, *The State of Women of Color in the United States: Although They've Made Incredible Strides, Many Barriers Remain for This Growing Population*, Ctr. for Am. Progress 2 (July 17, 2012), https://perma.cc/H43G-VURT. Women of color also report living in poverty at much higher rates. Poverty rates are more than double for women of color than for white women; a recent study found "[t]he poverty rate of white,

non-Hispanic women is 10.3 percent, compared to American Indian women and black women who had the highest poverty rates at 27.6 percent and 26.6 percent, respectively." *Ibid.*

And women of color who are not in lower-wage jobs likewise feel the effects of stereotyping. To offer one example, a study of a major research university found that 43% of academics who are women of color felt under close scrutiny, as compared with 33% of white women and 18% of white men, and that women of color were also more likely to report that they had to work harder than white women or white men to be perceived as legitimate. Gloria D. Thomas & Carol Hollenshead, *Resisting from the Margins: The Coping Strategies of Black Women and Other Women of Color Faculty Members at a Research University*, 70 J. Negro Educ. 166, 172 tbl.3 (2001). This discomfort can be explained by the fact that black women often are "presumed incompetent," not only in research but also in teaching. *See generally* Gabriella Gutiérrez y Muhs *et al.*, *Presumed Incompetent: The Intersections of Race and Class for Women in Academia* (2012).

As job skill level increases, the number of women of color decreases drastically. The latest data show that women of color make up 16.5% of the S&P 500 labor force. *Women in S&P 500 Companies by Race/Ethnicity*, Catalyst, (Mar. 2015) http://perma.cc/QV6Q-ARVW. But in 2012, black women held only 1.9% of the director positions on the boards of U.S. Fortune 500 companies, while Hispanic women held 0.8%. *Missing Pieces: Women and Minorities on* Fortune *500 Boards*, All. for Bd. Diversity 14 app.2 (2012), http://perma.cc/AQ89-ZQ5F. Black women

hold 0.2% of S&P 500 chief executive officer positions; Hispanic women hold none. Catalyst, *supra*.

b. *LGBT individuals.*

Although studies indicate that 6.28% of the United States' workforce identifies as gay or transgender (see Crosby Burns *et al.*, *The State of Diversity in Today's Workforce*, Ctr. for Am. Progress 3 (July 2012), https://perma.cc/3UDS-47U5), Apple CEO Tim Cook, who came out as gay in 2014, is the only CEO of a Fortune 500 company to publicly identify as LGBT. *See* Brett Molina, *Apple CEO Tim Cook: 'I'm Proud to Be Gay,'* USA Today (Oct. 30, 2014), http://perma.cc/9HPR-6KET. In the legal industry, an estimated 2.3% of lawyers are openly LGBT, but they are underrepresented in the partnership ranks, at 1.77%, as compared to 2.93% among associates. *LGBT Representation Among Lawyers in 2014*, Nat'l Ass'n for Law Placement (Mar. 2015), http://perma.cc/278E-AMWT.

LGBT individuals also consistently report having experienced or witnessed discrimination based on sexual orientation or gender identity in the workplace. *See generally* Brad Sears & Christy Mallory, *Documented Evidence Of Employment Discrimination & Its Effects On LGBT People*, Williams Inst. (July 2011), http://perma.cc/6NC5-RFUR. As recently as 2008, of a nationally representative sample of LGBT people, 38.2% of those who are "out" at work had experienced workplace harassment in the past five years, and 9.2% had lost a job because of their sexual orientation. *Id.* at 1.

Moreover, many LGBT persons perceive their workforces as inhospitable to their LGBT status. Recent studies indicate that 34% of companies do not

include gender identity in their non-discrimination policies and an equivalent number do not provide domestic partner health benefits. *Corporate Equality Index 2015: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*, Human Rights Campaign Found. 9 (2015), http://perma.cc/8NV7-4AES. Relatedly, 53% of LGBT employees hide their sexual orientation at work. *The Cost of the Closet and the Rewards of Inclusion: Why the Workplace Environment for LGBT People Matters to Employers*, Human Rights Campaign Found. 9 (2014), http://perma.cc/T8E4-MUAM.

And as with women, available statistics indicate that LGBT persons of color are at particular disadvantage: LGBT people of color have higher rates of unemployment compared to non-LGBT people of color and are at much higher risk of poverty than non-LGBT individuals. Movement Advancement Project *et el.*, *A Broken Bargain for LGBT Workers of Color*, Movement Advancement Project 4 (Nov. 2013), http://perma.cc/VF6E-3YB4. In addition, unemployment rates for transgender people of color are as high as four times the national unemployment rate. *Id.* at 5.

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A diverse educational experience that breaks down the often linked racial and gender stereotypes constraining students' opportunities and limiting their potential is key to opening economic opportunities for all.

C. The University of Texas program satisfies strict scrutiny.

In its initial consideration of this case, the Court reiterated that "racial 'classifications are constitu-

tional only if they are narrowly tailored to further compelling governmental interests.'" *Fisher*, 133 S. Ct. at 2419 (quoting *Grutter*, 539 U.S. at 326). A detailed application of that rule as it applies to the University of Texas program is beyond the scope of this brief. In the application of the Court's standard, however, it is essential to bear in mind that "the University has established that its goal of diversity is consistent with strict scrutiny." *Ibid.* And although "the validity and importance of the objective" does not change the analysis used in applying strict scrutiny, it "may affect the outcome of the analysis." *Id.* at 2421 (quoting *Hogan*, 458 U.S. at 724 n.9).

In the view of *amici*, the University of Texas program should survive such scrutiny. That program "'ensure[s] that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application.'" *Fisher*, 133 S. Ct. at 2420 (quoting *Grutter*, 539 U.S. at 337). Thus, the University considers students' academic achievements, interests, "leadership qualities, awards and honors, work experience, and involvement in extracurricular activities and community service," along with a host of other factors, allowing it to admit highly qualified students who will contribute to the robust exchange of ideas within the school, but who would not have been admitted under the Top Ten Percent Plan. *Fisher* v. *Univ. of Tex. at Austin*, 631 F.3d 213, 227-228 (5th Cir. 2011), rev'd and remanded, 133 S. Ct. 2411 (2013).

Moreover, the University of Texas has implemented a system of individualized review that properly recognizes that students enjoy the benefits of diversity only when the diversity actually touches

them in their particular programs, classes, and day-to-day academic experiences. University-wide numbers will inevitably obscure the fact that, because of the dramatic effect of stereotypes, minority applicants are often clustered in particular areas of study and specific career paths. To create a diverse environment in fact and not simply in theory, when assembling its student body a university must take into account students' interactions within the course of pursuing particular fields of study and other activities. And if the university reasonably concludes based on such a program-level analysis, as the University of Texas did, that it is not supplying some of its students with a diverse educational environment, it may employ the individualized assessments authorized in *Grutter* to remedy that deficiency.

By implementing its admissions policy with an eye to the particular course of study that each applicant intends to pursue, the University properly considers every aspect of applicants' "talents, experiences, and potential to contribute to the learning of those around them." *Grutter*, 539 U.S. at 315 (internal quotation marks omitted). Because respondents demonstrate that the University's plan "is narrowly tailored to achieve * * * the benefits of a student body diversity that 'encompasses a . . . broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.'" *Fisher*, 133 S. Ct. at 2418 (ellipses and alteration added by the Court) (quoting *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)), the University's efforts to obtain the real benefits of diversity for all its students and for the State satisfy strict scrutiny.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted.

MARCIA D. GREENBERGER
EMILY J. MARTIN
FATIMA GOSS GRAVES
National Women's Law Center
11 Dupont Circle, NW
Washington, DC 20036
(202) 588-5180

MARY L. BONAUTO
Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
(617) 426-1350

SUSAN L. SOMMER
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street
New York, NY 10005
(212) 809-8585

CHARLES A. ROTHFELD
Counsel of Record
ANDREW J. PINCUS
PAUL W. HUGHES
MICHAEL B. KIMBERLY
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

EUGENE R. FIDELL
Yale Law School
*Supreme Court Clinic**
127 Wall Street
New Haven, CT 06511
(203) 432-4992

Counsel for Amici Curiae

NOVEMBER 2015

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* The representation of petitioner by a clinic affiliated with Yale Law School does not reflect any institutional views of Yale Law School or Yale University.

APPENDIX

DESCRIPTIONS OF THE *AMICI CURIAE*

American Association of University Women

In 1881, the American Association of University Women was founded by like-minded women who had defied society's conventions by earning college degrees. Since then, AAUW has worked to increase women's access to higher education through research, advocacy, and philanthropy of over $90 million supporting thousands of women scholars. Today, AAUW has approximately 150,000 members and supporters, approximately 1000 branches, and more than 600 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, and chief among them is increased access to higher education. In adherence to our member-adopted Public Policy Program, AAUW supports affirmative action programs that establish equal opportunity for women and minorities and improve gender, racial, and ethnic diversity in educational institutions.

Atlanta Women for Equality

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to women and girls facing sex discrimination in the workplace or school and to helping our community build employment and educational environments according to true standards of equal treatment. Our central goal is to use the law to empower those who are denied educational and employment opportunities due to gender bias – an oppressive factor that burdens women of color disproportionately because race discrimination is often inextricable. Given that we cannot achieve women's equality if we leave any of our richly diverse number behind, we recognize

that building diverse student bodies is crucial to the women's rights movement.

California Women Lawyers

California Women Lawyers has represented the interests of more than 30,000 women in all facets of the legal profession since 1974. CWL's mission includes advancing women's interests, extending universal equal rights and eliminating bias. In pursuing its values of social justice and gender equality, CWL often joins amici briefs challenging discrimination by private and governmental entities, weighs in on proposed legislation, and implements programs fostering the appointment of women and other qualified candidates to the bench.

Clearinghouse on Women's Issues

The mission of the Clearinghouse on Women's Issues is to provide information on issues relating to women, including discrimination on the basis of gender, age, ethnicity, marital status, and sexual orientation, with particular emphasis on public policies that affect the economic, educational, health, and legal status of women, and to take action and positions compatible with our mission.

Connecticut Women's Education and Legal Fund

The Connecticut Women's Education and Legal Fund is a nonprofit women's rights organization dedicated to empowering women, girls, and their families to achieve equal opportunities in their personal and professional lives. For the past 42 years, CWEALF has provided legal information and conducted public policy and advocacy to ensure that all students have equal access to educational programs.

CWEALF supports affirmative-action programs that result in equal opportunities for both women and minorities, and that encourage diversity in educational institutions, workplaces, and communities.

Employment Justice Center

The Employment Justice Center is a nonprofit organization with a mission to secure, protect and promote workplace justice in the Washington, D.C. metropolitan area. For the past 15 years, the EJC has provided legal assistance on employment law matters to the working poor and has supported a local workers' rights movement. Through its weekly Workers' Rights Clinics, the EJC advises many workers claiming discrimination on the basis of sex and/or race, and refers such cases to counsel for representation before state and federal courts.

Equal Rights Advocates

Equal Rights Advocates is a national civil rights advocacy organization dedicated to protecting and securing equal rights and economic opportunities for women and girls. Since its inception in 1974 as a teaching law firm focused on sex-based discrimination, ERA litigates high-impact cases, engages in policy and legislative work, performs education and outreach, and gives advice and counseling to individuals who have experienced discrimination in education, employment and other spheres. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to enforce civil rights in state and federal courts, including before the United States Supreme Court. ERA is committed to ensuring equal access for all, including racial minorities, to education, employment, and the political process through enforcement of the Equal Protection Clause of the

United States Constitution and other state and federal laws.

Feminist Majority Foundation

The Feminist Majority Foundation, a nonprofit organization founded in 1987, is dedicated to the pursuit of women's equality, using research and action to empower women economically, socially, and politically. FMF works with students and faculty on hundreds of campuses throughout the United States and operates the largest feminist student network in the country. FMF actively supports diversity in public education, including at the university level, which helps to reduce stereotypes and enriches the educational experience for all students.

Gay & Lesbian Advocates & Defenders

Gay & Lesbian Advocates & Defenders works in New England and nationally to eradicate discrimination against LGBT people and people with HIV/AIDS from all communities, through litigation, public policy advocacy and education. GLAD has participated in this Court, as well as other federal and state courts, as counsel or amici to address equal protection issues.

Gender Justice

Gender Justice is a nonprofit advocacy organization whose mission is to eliminate gender barriers, whether linked to sex, sexual orientation, gender identity, or gender expression. Gender Justice makes use of three integrated program areas – impact litigation, policy advocacy, and education – to target the root causes of gender discrimination and highlight the central role that cognitive bias and stereotypes play in producing and maintaining inequality. As

part of its impact litigation program, Gender Justice acts as counsel in cases involving gender equality in the Midwest region, including providing direct representation of individuals facing discrimination. Gender Justice also participates as amicus curiae in cases that have an impact in the region and nationally.

Girls Inc.

Girls Inc. inspires all girls to be strong, smart, and bold, providing more than 140,000 girls across the U.S. and Canada with life-changing experiences and solutions to the unique challenges girls face. The Girls Inc. Experience consists of people, an environment, and programming that, together, empower girls to succeed. Trained staff and volunteers build lasting, mentoring relationships in girls-only spaces that are physically and emotionally safe and where girls find a sisterhood of support with shared drive, mutual respect, and high expectations. Hands-on, research-based programs provide girls with the skills and knowledge to set goals, overcome obstacles, and improve academic performance. Informed by girls and their families, Girls Inc. also advocates for legislation and initiatives that increase opportunities for girls. Girls Inc. serves girls ages 6 to 18 from diverse ethnic, racial, and socio-economic backgrounds.

Human Rights Campaign

Human Rights Campaign, the largest national lesbian, gay, bisexual and transgender political organization, envisions an America where lesbian, gay, bisexual and transgender people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. Among those basic rights is freedom from discrimination and access to equal opportunity.

Lambda Legal Defense and Education Fund, Inc.

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of people who are lesbian, gay, bisexual, transgender or living with HIV—many of whom are members of racial and ethnic minorities—through impact litigation, education, and public policy advocacy. Lambda Legal works to challenge the intersectional harms caused by racial injustice and discrimination on the basis of sexual orientation and gender identity. Lambda Legal has participated in this Court and lower courts in many cases addressing principles of equal protection, including in the context of public higher education.

Law Students for Reproductive Justice

Law Students for Reproductive Justice is a national network of law students, lawyers, and faculty dedicated to fostering legal expertise and support for the realization of reproductive justice. We believe that reproductive justice will exist when all people can exercise the rights and access the resources they need to thrive, and to decide when, whether, and how to have and parent children with dignity, free from discrimination, coercion, or violence.

National Alliance for Partnerships in Equity

The National Alliance for Partnerships in Equity is a consortium of state and local agencies, corporations, and national organizations committed to the advancement of equity and diversity in classrooms and workplaces. Through its four lines of business—professional development, technical assistance, research and evaluation, and advocacy—NAPE builds educator's capacity to implement effective solutions

for increasing student access, educational equity and workforce diversity. NAPE works to ensure that every person is able to fulfill her or his potential through equal access to and equity in educational options that lead to the entire spectrum of career choices. NAPE strongly supports the ability of educational institutions to use measures that take into account student demographics to increase diversity and overcome discrimination.

National Association of Social Workers

Established in 1955, the National Association of Social Workers is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. The Texas Chapter of NASW has 6000 members. NASW develops policy statements on issues of importance to the social work profession including a Policy Statement on Affirmative Action which supports deliberate steps taken to attain a national consensus that values, respects and accepts multicultural and racial diversity and supports opportunities for access to employment, housing, and education.

National Association of Women Lawyers

The National Association of Women Lawyers is the oldest women's bar association in the country, founded in 1899. Today, it is a national voluntary organization with members in all 50 states, devoted to the interests of women lawyers, as well as all women. Through its members, committees, and the Women Lawyers Journal, it provides a collective voice in the bar, courts, Congress, and workplace. We stand committed to ensuring equal educational opportunity for all women, including women of color, and support the ability of educational institutions to use gender-

and race-conscious measures to increase diversity and overcome discrimination.

National Center for Lesbian Rights

The National Center for Lesbian Rights is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public-policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. As an organization committed to challenging the complex forms of systemic discrimination that lie at the intersection of race and gender, we are especially interested in this case because race-conscious admissions are critical tools for providing opportunities for women and girls of color. Moreover, we are committed to ensuring that all youth have equal access to quality education, and racial diversity is an important part of providing a fulfilling and enriching educational environment.

National Committee on Pay Equity

The National Committee on Pay Equity, founded in 1979, is a nonprofit coalition of women's and civil rights organizations; labor unions; religious, professional, legal, and educational associations, commissions on women, state and local pay equity coalitions and individuals working to eliminate sex- and race-based wage discrimination and to achieve pay equity. NCPE supports legislative and legal efforts to close the wage gap that still exists between women, as well as people of color, and men.

National Congress of Black Women, Inc.

The National Congress of Black Women, Inc. is a nonprofit, public service organization. Our membership is open to all women across the country. Our mission is specifically to help Black women and their families by monitoring and supporting policies to improve the lives of Black women and their families; however, we support the mutual causes of all women. We are one of the lead groups on the Equal Rights Amendment with a mission of improving and protecting the legal, economic, education and other rights of women. NCBW was established in 1984 and has grown from 6 chapters in the past 10 years to over 100. Some of our specific projects are domestic violence, human trafficking, child slave labor, equal rights for women, mentoring young women and more.

The National Network to End Domestic Violence

The National Network to End Domestic Violence is a not-for-profit organization incorporated in the District of Columbia in 1994. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence. Throughout our history, NNEDV has advocated for civil and human rights for all, with particular attention to discrimination against underrepresented and underserved groups, such as people of color and LGBT individuals. We advocate for broad diversity and inclusion, with a conviction that exposure to people of diverse backgrounds decreases stereotyping and increases opportunity for traditionally underrepresented communities.

The National Organization for Women Foundation

The National Organization for Women Foundation is a 501 (c) (3) organization devoted to furthering women's rights through education and litigation. Established in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest grassroots feminist organization in the U.S., with hundreds of chapters in every state and the District of Columbia. Since its beginning, NOW Foundation's goals have been to achieve equal rights for women and to assure that women and girls have equal access to all aspects of education, including equal access for women and girls of color—especially to a post-secondary education.

National Partnership for Women and Families

The National Partnership for Women & Families, a nonprofit, national advocacy organization founded in 1971 as the Women's Legal Defense Fund, promotes equal opportunity for women, access to quality health care, and policies that help women and men meet both work and family responsibilities. The National Partnership has devoted significant resources to combating sex and race discrimination in education and employment.

National Women's Law Center

The National Women's Law Center is a nonprofit legal organization that is dedicated to the advancement and protection of women's legal rights and the expansion of women's opportunities. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of the Constitution and laws prohibiting discrimination. The Center has participated in numer-

ous cases involving sex discrimination before this Court and the federal courts of appeals.

Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law provides national leadership to promote justice and improve the lives and opportunities of people with low income. The Shriver Center advances laws and policies, through litigation, legislative and policy advocacy, and administrative reform, to achieve economic, racial, and social justice for our clients, the majority of whom are minority women. The Shriver Center is particularly interested in justice for racial and ethnic minorities who disproportionately make up those living in poverty, including minority women. Education is key to economic security and advancement. Policies and practices that encourage diversity and help minorities overcome discrimination are essential for their immediate and long term educational and employment opportunities. Racial diversity benefits all students and helps break down both racial and gender stereotypes. The Shriver Center has a strong interest in the continuation of policies and practices like those of the University of Texas at Austin that promote race- and gender-conscious admissions, which are important to opening pathways to opportunity for minorities and women and help them escape poverty.

Society of Women Engineers

Since its inception in 1950, the Society of Women Engineers has been the driving force that establishes engineering as a highly desirable career aspiration for women. SWE strongly believes that the United States has an untapped pool of potential technical

workers, and we must leverage the diversity of these individuals to fuel the innovation necessary for our future global competitiveness. SWE's mission is to stimulate women to achieve full potential in careers as engineers and leaders, expand the image of the engineering profession as a positive force in improving the quality of life, and demonstrate the value of diversity.

Southwest Women's Law Center

The Southwest Women's Law Center is a legal and policy advocacy nonprofit organization that seeks to create the systemic changes that are needed to improve the lives of girls and women of color in our communities, states, and throughout our country. We harness the power of law, research, and creative collaborations to create greater opportunities for women and girls by helping them to fulfill their personal and economic potential. The Southwest Women's Law Center supports racial diversity that will benefit and advance the opportunities of women of

Women Employed

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair

employment practices, helps increase access to training and education, and provides women with information and tools to plan their careers. Since 1973, the organization has assisted thousands of working women with problems of discrimination, monitored the performance of equal-opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed strongly supports the ability of educational institutions to use race- and gender-conscious measures to increase diversity and overcome discrimination.

Women's Business Development Center

The Women's Business Development Center had advocated for women's educational issues and women's empowerment for over four decades. It is committed to the advancement and protection of women's legal and other rights and the expansion of women's opportunities. Since 1970, the Center has worked to secure equal opportunity in education for girls and women through the full enforcement of the Constitution and laws prohibiting discrimination.

Women's Law Center of Maryland

The Women's Law Center of Maryland, Inc. is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education, and implementation of innovative legal-services programs to pave the way for systematic change. Through its various initiatives, the Women's Law Center pays particular attention to issues relat-

ed to gender discrimination, sexual harassment, employment law, and family law.

Women's Law Project

The Women's Law Project is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education, and individual counseling. Throughout its history, the WLP has worked to eliminate sex discrimination, bringing and supporting litigation challenging discriminatory practices prohibited by federal civil-rights laws. The WLP has a strong interest in the proper application of the law to ensure equal treatment in education.

Women's Media Center

The Women's Media Center is a non-profit research and education organization that works through media to create equal opportunities, participation, and representation for women and girls in society.

Young Women's Christian Association USA

Founded in 1858, YWCA is the oldest and largest multicultural organization dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all. Today, YWCA serves more than 2 million women and families annually in over 1,200 locations across the country by providing an assortment of direct services that advance equal justice and opportunity. YWCA supports the maintenance and strengthening of affirmative

action laws to protect people from discrimination on the basis of race and gender.

9to5, National Association of Working Women

9to5, National Association of Working Women is a multi-racial national membership organization of women in low-wage jobs working to achieve economic justice and end discrimination. 9to5's members and constituents are directly affected by sex and other forms of discrimination. Our 42-year-old organization has a long-standing commitment to and history of working to promote equal opportunity in employ-